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Supreme Court, U.S.
FILED
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No. 97-564

In The

Supreme Court of the United States

October Term, 1996

SRS TECHNOLOGIES, INC.,

Petitioner,

vs.

UNITED STATES DEPARTMENT OF DEFENSE, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

MEMORANDUM IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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388

STATEMENT PURSUANT TO RULE 29.6

Respondent High Technology Solutions, Inc. states it has neither parent companies nor nonwholly owned subsidiaries.

This is an action by Petitioner SRS Technologies, Inc. ("SRS") contesting an award of a government contract to Respondent High Technology Solutions, Inc. ("HTS") under the Small Business Administration's ("SBA") "8(a) program." This program, authorized by section 8(a) of the Small Business Act (15 U.S.C. § 637(a)), allows the SBA to give government contracts to small businesses owned and controlled by socially and economically disadvantaged individuals. Both SRS and HTS are owned and controlled by individuals whose race entitles their businesses to a presumption of social disadvantage under the 8(a) program. SRS claims that presumption is unconstitutional.

SRS' complaint was initially filed against Respondents the United States Department of Defense, William Perry, Secretary, Department of Defense, the Small Business Administration, and the Defense Evaluation Support Agency. Respondent HTS, who had begun performing the contested contract when SRS filed its lawsuit, intervened.

The district court granted a temporary restraining order enjoining HTS from work on the contested contract. The district court later denied SRS' request for a preliminary injunction and HTS was allowed to continue performance on the contested contract. That contract has since been completed.

Both HTS and the government respondents moved to dismiss SRS' complaint in the district court on the grounds SRS lacked standing to challenge the race-based presumption in the 8(a) program. The court granted the motion and dismissed. The Fourth Circuit affirmed in an unpublished opinion.

SRS now requests this Court grant certiorari solely on the basis of an alleged conflict between the unpublished opinion in this case and the recent decision in *Dynalantic Corp. v. Dept. of Defense*, 115 F.3d 1012 (D.C. Cir. 1997). In the *Dynalantic* case,

the District of Columbia Circuit held a plaintiff that did not qualify for any aspect of the 8(a) program had standing to contest that program's race preference provisions. The District of Columbia's decision is readily distinguishable from the opinion in this case because the plaintiff in *Dynalantic* was not a minority-owned business entitled to preference under the 8(a) program. Standing must be established by a "causal connection between the injury and the conduct complained of." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Because SRS is a minority-owned business subject to the very preference about which it complains, the Fourth Circuit correctly held SRS has no standing to contest that preference. SRS' basis for petitioning for certiorari fails and, accordingly, the petition should be denied.

Respectfully submitted,

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